



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-4045

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201688.

The City of Garland (the "city") received a request for information regarding a specific incident. You claim that the highlighted portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(3) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information relating to a threat against a peace officer collected or disseminated under Section 411.048 [of the Government Code.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 411.048(b) of the Government Code provides that

[t]he bureau of identification and records [of the Texas Department of Public Safety ("DPS")] shall establish and maintain a central index in the law enforcement information system maintained by the [DPS] to

(1) collect and disseminate information relating to an individual's expression of intent to inflict serious bodily injury or death on a peace officer; and

(2) alert a peace officer of an expression of intent to inflict serious bodily injury or death on the officer.

Gov't Code § 411.048(b). Section 411.048(c) provides that

[a] criminal justice agency, after making each determination required under Subsection (d) [of section 411.048], shall immediately enter into the information system an electronic report of an individual who expresses an intent to inflict serious bodily injury or death on a peace officer.¹ The agency shall enter the information in the form and manner provided by rules adopted by the director [of the DPS].²

Id. § 411.048(c). Section 411.048(d) provides that

[b]efore entering information collected under this section into the information system, a criminal justice agency must determine that the report described by Subsection (c):

(1) is not from an anonymous source; and

(2) consists of an expression of intent to inflict serious bodily injury or death on a peace officer.

Id. § 411.048(d). You assert that the highlighted information relates to a threat against a peace officer. Based on your representations and our review of the highlighted information we conclude that to the extent this information was collected or disseminated under 411.048, it may be withheld under 552.108(a)(3) of the Government Code. However, to the extent that the information was not collected or disseminated under 411.048, it may not be withheld under 552.108(a)(3).

¹Section 411.048(a)(1) adopts the definition of "criminal justice agency" found at article 60.01 of the Code of Criminal Procedure. Article 60.01(6) provides that "'criminal justice agency' means a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice." Crim. Proc. Code art. 60.01(6).

²Section 411.048(i) authorizes the DPS to adopt rules to implement and enforce section 411.048. The DPS rules are found at subchapter C of chapter 5 of title 37 of the Texas Administrative Code. *See* Gov't Code 37 T.A.C. § 5.31 *et seq.*

Because the application of section 552.108(a)(3) is conditional, we must also consider whether any of the highlighted information is confidential by law. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The highlighted information includes information which is normally confidential under common law privacy. In this case, the information subject to common law privacy pertains to the requestor, who has a right of access to this information under section 552.023 of the Government Code if the information is not excepted under section 552.108(a)(3). *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the information normally excepted under section 552.101 in conjunction with common law privacy must be released to the requestor.

We also note the presence of social security numbers in the highlighted information. Social security numbers may be excepted in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Within the

highlighted information we have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

We note that the highlighted information contains Texas motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Pursuant to section 552.130, you must withhold the marked Texas motor vehicle information.

Finally, we note the presence of information which may be protected by section 552.1175 of the Government Code. Section 552.1175 provides in part that

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, you do not inform this office, nor does any of the submitted information indicate, whether the individuals whose information is at issue are licensed peace officers who have notified the city of their elections of confidentiality for this information in accordance with subsections 552.1175(b)(1) and (2). *See, e.g.,* Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release

voter information made confidential under section 552.1175 of Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until recipient governmental entity receives a section 552.1175 notification). If the individuals are currently licensed peace officers who comply with section 552.1175(b), the city must withhold the individuals' home addresses, home telephone numbers, and social security numbers. If not, the city may not withhold this information under section 552.1175.

In summary, to the extent the information you highlighted was collected or disseminated under section 411.048 of the Government Code, it may be withheld under 552.108(a)(3) of the Government Code. However, to the extent that the information was not collected or disseminated under 411.048, it may not be withheld under section 552.108(a)(3). If section 552.108(a)(3) does not apply, the requestor has a right of access under section 552.023 to information about him that would otherwise be protected by common law privacy. Social security numbers may be excepted from release under 552.101 in conjunction with federal law. You must, under section 552.130, withhold the Texas motor vehicle information we have marked. If section 552.1175 is applicable, then you must withhold the home addresses, home telephone numbers, and social security numbers of individuals covered by this section.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

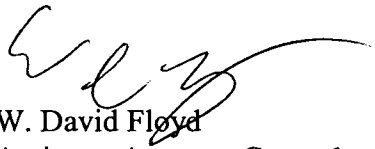
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 201688

Enc. Submitted documents

c: Mr. Gary D. Sawyer
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Garland, Texas 75040-2853
(w/o enclosures)